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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/798,371

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EXAMINER
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REVAK, CHRISTOPHER A

ART UNIT	PAPER NUMBER
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2131

DATE MAILED: 01/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/798,371	Applicant(s) VENTERS ET AL.	
	Examiner Christopher A. Revak	Art Unit 2131	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10/24/05.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-36 and 58-106 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 and 58-106 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed October 24, 2005 have been fully considered but they are not persuasive.

The examiner notes that the applicant's arguments are moot pertaining to the restriction, however the restriction was made final as per the applicant's election with traverse April 8, 2005.

The objection to the specification is hereby withdrawn based on the applicant's amendment.

As per the applicant's argument pertaining to Downs et al, U.S. Patent 6,226,618, the applicant argues that Downs et al fails to teach selecting one of more modules for inclusion in the digital container and a type of streaming media content and the DRM.

The examiner respectfully disagrees. Based on the applicant's specification, on page 4, lines 15-17, it is recited that the modules are used to control playback of the streaming media content. There exists multiple examples of modules in the applicant's specification, however the examiner is broadly interpreting the limitation of a module as that which controls the playback of content which is consistent with the applicant's specification. Downs et al discloses of the use of digital rights management, or DRM that the secure container is a cryptographic carrier of the content, interpreted by the examiner as streaming media content, that uses encryption, digital signatures, and

digital certificates to provide protection against unauthorized use or modification of the content, see column 7, lines 17-22. The use of encryption, digital signatures, and digital certificates are multiple forms of modules that control the playback of the content through proving authenticity and integrity of the content, see column 7, lines 22-24. Furthermore, Downs et al teaches that rights management, or DRM as the applicant has claimed, that is applied to the content, see column 7, lines 24-25.

The applicant's limitation of a file type is broadly interpreted as a file of any type or format. Downs et al teaches that the content can be information such as music, programs, videos, pictures, or games, see column 3, lines 20-21. The applicant's arguments are moot since Downs et al teaches of multiple types of files.

In summary, Downs et al does indeed teach selecting one of more modules for inclusion in the digital container and a type of streaming media content and the DRM as is discussed above.

The applicant argues that that prima facie case of obviousness had not been met by the examiner for the limitations of XML tags. The examiner notes that official notice has been taken and has not been seasonably challenged by the applicant. To adequately traverse such a finding, the applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b). See also Chevenard, 139 F.2d at 713, 60 USPQ at 241 ("[I]n the absence of any demand by appellant for the examiner to produce authority for his statement, we will not consider this contention."). A general allegation that the claims define a patentable

invention without any reference to the examiner's assertion of official notice would be inadequate, see MPEP 2144.03. The applicant has not adequately traversed the examiner's use of official notice. The examiner has indicated that Downs et al fails to disclose of XML tags and accordingly took official notice. The applicant argues that it is not obvious for Downs et al to use XML tags and has not challenged the examiner to provide a reference reciting of the use of XML tags.

Blanton et al discloses of XML, also known as extensible markup language, that lets web developers and designers create customized tags used for presenting information that is possible with older HTML files. Downs et al discloses of the use of HTML files that present the user with purchase options with the terms and conditions associated with the content, see column 75, lines 13-16. Downs et al discloses of the use of digital rights, please refer to discussion above, and it is obvious that Downs et al could have allowed the usage of XML tags to dictate usage conditions.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-17,25-36,58-87, and 95-106 are rejected under 35 U.S.C. 102(b) as being anticipated by Downs et al, U.S. Patent 6,226,618.

As per claims 1,58,59, and 71, it is disclosed by Downs et al of a method and computer program embodied on a computer readable for creating a accessing streaming content. The digital container is created that includes content including streaming media content and digital rights management, or DRM. Modules are selected for inclusion in the digital container and the selection is based on a type of steaming media content and the DRM. The streaming media content of the digital container is encrypted to produce a secured streaming container, or SSC. The SSC is transmitted to a target device for access of the SSC from the target device (col. 7, lines 11-40 and col. 82, lines 51-60).

As per claims 2 and 72, Downs et al teaches of transmitting the SSC over any infrastructure (col. 6, lines 62-64; col. 7, lines 26-28; and col. 8, lines 41-45) wherein it is interpreted by the examiner that the infrastructure includes a local area network, a wide area network, a wireless network, and the Internet.

As per claims 3,60, and 73, Downs et al discloses of the target device can include any compliant player (col. 6, lines 62-64) and it is interpreted by the examiner that the compliant player can include a cell phone, PDA, personal computer, computing device, portable music player, tablet computer, cable modem, satellite receiver, television, and a cable television tuner.

As per claims 4,61, and 74, the teachings of Downs et al recite of the digital container is created by receiving input from the target device, the media files to be included in the digital container, a transaction option type, DRM option, digital container

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graphic, and a search descriptor data (col. 6, lines 57-62; col. 73, lines 20-24; and col. 87, lines 65-66).

As per claims 5, 62, and 75, it is taught by Downs et al of the transaction option type includes a financial transaction type, a transaction update type, a transaction update address, a server address, demographics type, or a subscription type. The financial transaction type includes a credit card type and the subscription type includes a financial transaction defining a period of time (col. 11, line 62 through col. 12, line 6; col. 29, lines 18-30; and col. 30, lines 39-43).;

As per claims 6, 63, and 76, it is disclosed by Downs et al of selecting software modules based on a type of media files, which control the stream of on the media files in the environment of the target device (col. 7, lines 11-40 and col. 82, lines 51-60).

As per claims 7 and 77, Downs et al disclose of the digital container graphic is an image that is informational and promotional graphics that appear on a viewable electronic digital container cover before and after the digital container is opened (col. 73, lines 17-28).

As per claims 8, 64, and 78, it is disclosed by Downs et al of encoding the streaming media content for playback by a media player resident on the target device and a media player included with the digital container (col. 8, lines 45-53 and col. 82, lines 51-60).

As per claims 9, 65, and 79, the teachings of Downs et al recite of the streaming media includes video, audio, animation, and text content (col. 6, lines 45-48; col. 8, lines 26-29; and col. 82, lines 51-60).

As per claims 10 and 80, Downs et al disclose that the streaming media content is streaming media files (col. 82, lines 51-60).

As per claims 11 and 81, Downs et al disclose of creating secondary files for inclusion in the digital container wherein the secondary data files include HTML files, an image file and a segment of the media files (col. 6, lines 45-48 and col. 33, lines 63-67).

As per claims 12 and 82, Downs et al teaches of viewable prior to executing a purchase transaction for the media content, unencrypting for previewing (col. 68, lines 20-32).

As per claims 13 and 83, Downs et al disclose of an HTML file and image file are viewable during playing of the streaming files (col. 6, lines 45-48; col. 33, lines 63-67; and col. 82, lines 51-60).

As per claims 14,66, and 84, it is taught by Downs et al of providing an execution batch file in the digital container for controller the presentation of the streaming media content in a preset sequence, a relative sequence, and a timing interval (col. 11, line 62 through col. 12, line 6 and col. 82, lines 51-60).

As per claims 15 and 85, Downs et al disclose of establishing limits on access to the streaming media content based on a period of time and the number of access (col. 59, lines 7-15).

As per claims 16 and 86, Downs et al teaches of limiting a copy of the streaming media content and transferring the streaming media content (col. 59, lines 7-15 and col. 82, lines 51-60).



As per claims 17 and 87, it is disclosed by Downs et al of producing informational and search metadata tags sets wherein tag sets are included in the SSC (col. 68, lines 20-32 and col. 87, lines 65-66).

As per claims 25 and 95, the teachings of Downs et al recite of registering the SSC with a digital container verification database including identifying the SCC and providing date information about the SSC (col. 76, lines 51-58).

As per claims 26 and 96, Downs et al teaches registering the SSC occurs automatically when it is created (col. 76, lines 51-58).

As per claims 27 and 97, it is disclosed by Downs et al that the transmitting is via email, FTP, download from a web site, peer to peer sharing, instant message, or physical transport (col. 8, lines 41-45).

As per claims 28 and 98, Downs et al discloses of encoding the digital container for transmission as an HTML file (col. 33, lines 63-67).

As per claims 29 and 99, Downs et al teaches of establishing a transaction type that is to be executed for a user to gain permission to open the SSC, and when executed, the transaction type includes financial data and personal user data (59, lines 7-15 and col. 76, lines 51-58).

As per claims 30 and 100, Downs et al disclose of personal identification includes a user identification number (col. 76, lines 51-58).

As per claims 31 and 101, Downs et al teaches of personal identification (biometrics) includes fingerprint data (col. 13, lines 49-62 and col. 76, lines 51-58).

As per claims 32 and 102, it is taught by Downs et al of device information includes gathering data from a removable storage media (col. 7, lines 55-65).

As per claims 33 and 103, Downs et al discloses of a transaction type that includes a subscription type that gathers subscription data enabling a user to purchase multiple digital containers (col. 12, lines 12-23).

As per claims 34 and 104, it is taught by Downs et al of subscription transaction type gathers subscription data enabling a user to purchase multiple digital containers related to a pre-determined time period (col. 12, lines 12-23).

As per claims 35 and 105, the teachings of Downs et al disclose of encrypting includes compressing the contents of the digital container (col. 8, lines 26-37).

As per claims 36 and 106, Downs et al teaches of incorporating a hidden key into the digital container (col. 11, lines 40-43).

As per claim 67, Downs et al discloses of controlling access to the streaming media content using the DRM on subsequent access (col. 12, lines 12-23 and col. 82, lines 51-60).

As per claim 68, it is taught by Downs et al of decrypting the streaming media content and playing the streaming media content using a media player (col. 82, lines 46-60).

As per claim 69, Downs et al teaches of detecting an attempt to access the SSC, determining if permission has been previously granted to open the SSC. If permission has not previously been granted, supplying transaction information, sending the transaction information to a digital container verification server in an encrypted session,

sending a permission token back to the SSC, and granting permission to open the SSC (col. 21, lines 43-64).

As per claim 70, it is disclosed by Downs et al of playing the streaming media content such that segments of the streaming media are sequentially playing from the digital container while the remaining portions of the streaming media contents remain secure in the digital container until played (col. 82, lines 46-60).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 18-24 and 88-94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Downs et al, U.S. Patent 6,226,618.

As per claims 18,20,88, and 90, the teachings of Downs et al disclose of encrypting content and of transmission across the Internet, however are silent in disclosing of the use of extensible markup language, or XML. The examiner hereby takes official notice that the use of XML is notoriously known for exchanging information across the Internet and can be created manually or through automation. It would have been obvious to a person of ordinary skill in the art at the time of the invention to have been motivated for using XML. The motivational benefits of XML is that is allows for easy exchange of complex documents across the World Wide Web that is formatted

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according to rules for protection. It is obvious that the teachings of Downs et al would have been able to accommodate the usage of XML documents since the main concern of Downs et al is for protecting secure documents against unauthorized usage.

As per claims 19 and 89, Downs et al disclose of tag sets that are used by search engines to discover the digital container and the streaming media content (col. 87, lines 65-66).

As per claims 21 and 91, it is taught by Downs et al of tags describing portions of the streaming media content and provides a file size and file type (col. 61, bottom half of page).

As per claims 22 and 92, Downs et al disclose of tags disclosing access rights to the target device (col. 59, lines 31-36).

As per claims 23 and 93, it is disclosed by Downs et al of tags providing content file title, key word data, and a key phrase for search descriptors for search engines (col. 61, bottom half of page and col. 87, lines 65-66).

As per claims 24 and 94, the examiner is interpreting the teachings of Downs et al to be compliant with Open Mobile Alliance Standards and Open Data Rights Language since it is recited by Downs et al that the architecture is open to varying distribution networks (col. 6, lines 56-64 and col. 8, lines 41-53).

***Conclusion***

1. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher A. Revak whose telephone number is 571-272-3794. The examiner can normally be reached on Monday-Friday, 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz Sheikh can be reached on 571-272-3795. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher Revak  
Primary Examiner  
AU 2131

1/9/06

CR

  
January 9, 2006